

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

BILLY DAN TAYLOR AND  
CATHY TAYLOR

PLAINTIFFS

V.

CAUSE NO. 1:96CV179-B-A

GENERAL MOTORS CORPORATION

DEFENDANT

**MEMORANDUM OPINION**

This cause is presently before the court on the defendant's motion to dismiss. The sole issue to be determined by the court is whether Mississippi's newly created products liability statute repeals expressly or by implication the common law cause of action for negligence or the statutory cause of action for breach of implied warranty. Upon due consideration of the defendant's motion, the plaintiffs' response thereto, and the memoranda submitted by the parties, the court is prepared to rule.

On May 25, 1993, plaintiff Billy Dan Taylor, was operating a 1989 GMC Jimmy four-wheel drive automobile which was owned by his employer. On that date, he was involved in an accident while driving the vehicle and, as a result of a head-on collision, the seat belt being worn by the plaintiff allegedly broke causing or enhancing serious bodily injury experienced by the plaintiff. The plaintiffs filed suit on or about May 20, 1996 in state court claiming causes of action in strict liability in tort, negligence

and breach of warranty.<sup>1</sup> This action was timely removed to this court on June 14, 1996.

The defendant contends that the plaintiffs' negligence and breach of implied warranty theories of liability are now excluded under the Mississippi Products Liability Act of 1993 ("Act"). Miss. Code Ann. § 11-1-63 (Supp. 1996). To support this position, the defendant relies exclusively on the first nine words of that Act. The Act states that "[i]n any action for damages caused by a product . . ." a manufacturer or seller of a product will not be liable unless the plaintiff proves certain elements. Those elements are essentially the traditional elements of strict liability in tort as set forth in § 402A of the Restatement (Second) of Torts. The Act thus, apparently establishes the conditions for liability by manufacturers and sellers of a product. It is the defendant's position that those nine words leave no room for other theories of liability and as a result is the exclusive theory for plaintiffs injured by a product.

This appears to be a question of first impression in Mississippi. "When there is no ruling by the state's highest court, it the duty of the federal court to determine as best it can, what the highest court of the state would decide." Transcontinental Gas Pipe Line Corp. v. Transportation Ins. Co.,

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<sup>1</sup>In their complaint, the plaintiffs claimed, inter alia, that the overall design of the vehicle was defective due to the lack of a driver's side air bag. This claim has, however, been preempted by federal law and fails to state a claim under Mississippi law. See Cooper v. General Motors Corp., 1996 WL 272, 362 (Miss. 1996). The plaintiffs agree that this claim should be dismissed.

953 F.2d 985, 988 (5th Cir. 1992) (footnote omitted). This court is therefore required to make an Erie guess on how the Mississippi Supreme Court would interpret its own law if presented with the question. Lawrence v. Virginia Ins. Reciprocal, 979 F.2d 1053, 1055 (5th Cir. 1992); see also Erie R.R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

In evaluating a statute passed by the legislature, ordinarily the court should first look to the language of the statute itself. If found to be plain and unambiguous, the language should be given its ordinary meaning. Marathon LeTourneau Co. v. NLRB, 414 F. Supp. 1074, 1080 (S.D. Miss. 1976). Regardless, "the ultimate goal of this Court in interpreting a statute is to discern and give effect to the legislative intent." City of Natchez v. Sullivan, 612 So. 2d 1087, 1089 (Miss. 1992). "[A] statute should be given that reading which best fits the legislative language and is most consistent with the best statement of policies and principles justifying that language." Gentry v. Wallace, 606 So. 2d 1117, 1122 (Miss. 1992). "A statute should be given that reading most coherent in principle, given the entire statutory scheme and the other valid rules in the field." Id. at 1122-23. Moreover, the intent of the legislature must be determined by the total language of a statute and not from a segment considered apart from the whole. McCluskey v. Thompson, 363 So. 2d 256, 259 (Miss. 1978).

In determining the meaning of this statute the court must look to House Bill 1270 in its entirety. This Bill was enacted by the

Mississippi state legislature on March 5, 1993, ostensibly codifying certain elements of Mississippi common law while also establishing new rules regarding products liability. It is composed of five sections. Section one, which is now codified at § 11-1-63, is what is known as the Mississippi Products Liability Act. Section two, now codified at § 11-1-65, affects the procedures for determining punitive damages. Section three amended § 75-2-715 of Mississippi's version of the Uniform Commercial Code (UCC), dealing with incidental and consequential damages. Section four amended § 11-7-13 of the Mississippi Wrongful Death Act. Section five established the effective dates of the Bill's procedural provisions (July 1, 1993) and its substantive provisions (July 1, 1994).<sup>2</sup>

The court finds that after examining House Bill 1270, rules of construction, and the object and policy behind the Act, the legislature did not intend to abrogate the long established common law theory of negligence or the statutory cause of action for breach of implied warranty. The court looked to four factors to aid in this determination.

First and foremost, as a general rule "a new statute will not be considered reversing long-established principles of law and equity unless the legislative intention to do so clearly appears." Thorp Commercial Corp. v. Mississippi Road Supply, 348 So. 2d 1016,

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<sup>2</sup>All provisions of the Act apply to actions filed on or after July 1, 1994. The present action was filed on or about May 20, 1996. Thus, the Act is clearly applicable to the plaintiffs' lawsuit.

1018 (Miss. 1977). The only authority cited by the defendant for its argument is the first sentence of the Act. On its face the language tends to imply that strict liability in tort is the sole cause of action available in a products liability suit. It does not, however, expressly limit any other actions. Moreover, the Mississippi Supreme Court in the past has indicated a clear desire to keep strict liability and negligence distinct from one another and to allow both to be plead in the same action. Toliver v. General Motors Corp., 482 So. 2d 213, 219 (Miss. 1985), cert. denied, 386 U.S. 912, 17 L. Ed. 2d 784 (1967); State Stove Mfg. Co. v. Hodges, 189 So. 2d 113, 118 (Miss. 1966); see also Sperry-New Holland v. Prestage, 617 So. 2d 248, 264 (Miss. 1993) (McRae, J., concurring). If the legislature was intent on restricting the available causes of action, especially in light of the long standing tradition of pleading many alternative theories in one action, they certainly knew how to do so. The fact that they did not do so expressly, coupled with other factors, indicates a contrary intention.

That intention is made clearer when the court addresses the question of what the Bill actually did to products liability law in Mississippi. Essentially, the legislature codified the existing common law of strict liability in tort as presented in the Restatement (Second) of Torts § 402A. See Bobby M. Harges, An Evaluation of the Mississippi Products Liability Act of 1993, 63 Miss. L.J. 697 (1994); Horton v. American Tobacco Co., 667 So. 2d 1289, 1297 (Miss. 1995) (Hawkins, J., concurring in part and

dissenting in part) ("A perusal of Miss. Code Ann. § 11-1-63 reveals it to be essentially a codification by the Legislature of the criteria of § 402A Restatement." ) The legislature also made certain changes to that existing law. Harges, supra at 708 et seq. The introduction of House Bill 1270 notes that it is "[a]n act to codify certain rules and establish new rules applicable to product liability actions . . . ." Those new rules are clearly indicated in the language of the statute. Since the Act is silent on alternative causes of actions, but expressly discusses those areas that effect a change in the common law, it is reasonable to presume the legislature did not intend to preclude that which was so prevalent in practice.

The final two factors are the most convincing evidence that the legislature did not intend to foreclose alternative theories of liability. An analysis of the legislature's actions as they relate to the remainder of House Bill 1270 indicates why. Where a defect causes damage to the product itself and/or causes only economic loss without accompanying physical injury to person or property, a claimant must bring his action as a breach of warranty action under Mississippi's version of the UCC. When a product causes physical injury to persons or property, the Act provides a vehicle to bring a cause of action in products liability. "However, there is nothing to prevent a claimant from recovering personal injury or property damages in a warranty action" under the UCC. Harges, supra at 731-32. This is so because § 75-2-715 allows for consequential damages to be brought in the same breach of warranty

action.<sup>3</sup> The legislature expressly dealt with this section of the code in enacting House Bill 1270. Most significantly, it left unchanged the definition of consequential damages and thus maintained the availability of pursuing a cause of action for all damages under the UCC. See H.B. No. 1270 ch. 302 § 3. "Although the Mississippi Products Liability Act is available as a remedy for claimants who are injured by a product, warranty law still provides an effective remedy for such claimants." Harges, supra at 732. Thus, the legislature could not have intended to create the exclusive chose in action for damages caused by a product if they, in the same bill, recognized (and left undisturbed) an alternative action under the UCC.

Similarly, the legislature reworked the Mississippi Wrongful Death Act. Miss. Code Ann. § 11-7-13. This Act provides a cause of action "[w]henver the death of any person shall be caused by any wrongful or negligent act or omission . . . or . . . by the breach of any warranty, express or implied, of the purity or fitness of any . . . commodit[y] intended for human consumption . . . ." Id. (emphasis added). These causes of action were not affected by the amendments to this section. Indeed, the Act may have significantly expanded the number of theories of liability available. Harges, supra at 763-65. For instance, the Act states that "[a] wrongful death action may be maintained or asserted for strict liability in tort or for any cause of action known to the

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<sup>3</sup>This section defines consequential damages as "[i]njury to person or property proximately resulting from any breach of warranty." Miss. Code Ann. § 75-2-715(b).

law . . . ." Therefore, the legislature clearly intended, inter alia, that an action could be maintained by a wrongful death beneficiary for a breach of implied warranty involving a product -- an action the defendant would not admit existed under its theory of § 11-1-63. Thus, many alternative causes of action are available to the injured claimant -- a notion clearly recognized by the legislature in enacting this Bill.

The weight of the evidence convinces the court that the legislature was simply establishing the standards and procedures to be followed in actions maintained under a strict products liability theory and did not mean to disturb long-standing principles of law and equity such as negligence and breach of implied warranty. The rather loose language used by the legislature was not intended to create one and only one theory of recovery for claimants injured by a product, but to solidify the at times amorphous area of law surrounding strict liability. The defendant, thus, comes to this court with the slimmest of authority and engages in unnecessary legal maneuvering on what is at best an academic exercise which will not further the adjudication of this cause and wastes judicial resources. For the foregoing reasons, the defendant's motion to dismiss will be granted in part and denied in part. An order will issue accordingly.



THIS, the \_\_\_\_\_ August, 1996.

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**NEAL B. BIGGERS, JR.**  
**UNITED STATES DISTRICT JUDGE**

Order needs to Grant the defendants motion and dismiss the "no air  
b" claim and DENY the motion in all other respects.